

§ 426.100

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- 426.587 Record for appeal of a Board NCD decision.

AUTHORITY: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh)

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Subpart A—General Provisions

§ 426.100 Basis and scope.

(a) *Basis*. This part implements sections 1869(f)(1) and (f)(2) of the Act, which provide for the review of LCDs, NCDs, and certain determinations that are deemed to be NCDs by statute.

(b) *Scope*. This subpart establishes the requirements and procedures for the review of LCDs and NCDs.

§ 426.110 Definitions.

For the purposes of this part, the following definitions apply:

Aggrieved party means a Medicare beneficiary, or the estate of a Medicare beneficiary, who—

(1) Is entitled to benefits under Part A, enrolled under Part B, or both (including an individual enrolled in fee-for-service Medicare, in a Medicare+Choice plan, or in another Medicare managed care plan);

(2) Is in need of coverage for a service that is denied based on an applicable LCD (in the relevant jurisdiction) or an NCD, regardless of whether the service was received; and

(3) Has obtained documentation of the need by the beneficiary's treating physician.

Board means the Departmental Appeals Board.

Clinical and scientific experts mean experts that are consulted by the ALJ or Board as independent and impartial individuals, with significant experience and/or published work, pertaining to the subject of the review.

Contractor means a carrier (including a Durable Medical Equipment Regional Carrier), or a fiscal intermediary (including a Regional Home Health Intermediary) that has jurisdiction for the LCD at issue.

Deemed NCD means a determination that the Secretary makes, in response to a request for an NCD under section 1869(f)(4)(B) and (C) of the Act, that no